

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

vs.

WILLIAM KURT DOBSON,
Defendant.

ORDER
AND
MEMORANDUM DECISION

Case No. 2:06-CR-563-TC

Defendant William Kurt Dobson has been indicted on two counts of intercepting electronic communications in violation of 18 U.S.C. § 2511(1)(a) (Counts I and II) and one count of obtaining information from a protected computer in violation of 18 U.S.C. § 1030(a)(2)(C), (b), (c)(2)(B)(i)-(iii), and (e)(2) (Count III). He has filed a Motion to Dismiss Counts I and II (Docket # 105). The court has determined that a hearing is not necessary and so it decides the issue on the briefs. For the reasons set forth below, Mr. Dobson's Motion is DENIED.

Mr. Dobson files his motion under Rule 12(b)(3)(B) of the Federal Rules of Criminal Procedure, which allows pretrial motions alleging a defect in the indictment. In his motion, Mr. Dobson contends that the Corrected Indictment fails to state an offense under 18 U.S.C.

§ 2511(1)(a). That statutory provision reads as follows:

Except as otherwise specifically provided in this chapter[,] any person who intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication . . . shall be punished [by fine or imprisonment for up to five years, or both].

The court has reviewed the Corrected Indictment, the parties' briefs, and the case law cited by both parties. Based on its review, the court finds that the Corrected Indictment properly states offenses under § 2511(1)(a).

As for the issue raised by Mr. Dobson regarding electronic storage, although the court finds the case of United States v. Councilman, 418 F.3d 67 (1st Cir. 2005), to be particularly persuasive, the court declines to reach the issues raised by Mr. Dobson that fall outside the indictment until the court has heard the evidence at trial.

ORDER

Mr. Dobson's Motion to Dismiss Counts I and II (Docket # 105) is DENIED. The hearing scheduled for Thursday, November 29, 2007, at 1:00 p.m. is stricken. Trial will begin, as already scheduled, on December 17, 2007.

DATED this 20th day of November, 2007.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
Chief Judge